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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/646,638	09/20/2000	James Dunstone Townsend	27609-67125	5708

7590

10/01/2003

Barnes & Thornburg
11 South Meridian Street
Indianapolis, IN 46204

EXAMINER

RAO, SHEELA S

ART UNIT

PAPER NUMBER

2125

DATE MAILED: 10/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/646,638

Applicant(s)

TOWNSEND, JAMES DUNSTONE

Examiner

Sheela Rao

Art Unit

2125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 September 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-17 are presented for examination.
2. Applicant's submission of references on form PTO-1449 has been considered. A signed copy of the form is attached.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1, 12, and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 at line 2 of the (b) limitation "to extract data ..." is indefinite; the type of data to be extracted is not clear. Inclusion of the type of data to be used is suggested, i.e. "to extract rainfall data". At limitation (c) "a store to store the extracted data" and at line 2 of limitation (d) "... to the store, ..." is claimed. "[A] store" is not common terminology in the art. Examiner interprets "a store" to be "a storage means" for purposes of examination. And again, the "extracted data" is stated. As aforementioned, the type of data to be extracted is not clear.

The same terms for the same reasons are rejected in instant claim 12. In line 2 of limitation (b), "extracting data" and in limitation (c) "storing the extracted data".

Claim 15 at line 2 introduces a new limitation "(f)". Limitation (f) is out of sequence as there seems to be no limitation (e).

Appropriate correction is required.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple

assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1, 2, 4, 6-15 and 17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 6-17, and 20 of U.S. Patent No. 6,076,740 in view of 5,717,589. The instant ^{invention} includes a radar scan of the area to determine rainfall; the patented invention of US Patent 6,076,740 (Townsend) fails to teach the use of radar to scan rainfall. For this reason, the patented invention of US Patent 5,717,589 (Thompson, et al.) is relied upon. The invention by Thompson, et al. teaches the use of a weather tracking system that is able to track and predict weather conditions with the use of a radar system in a geographic location. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the radar system of Thompson with the irrigation control system of Townsend so as to be able to more accurately gauge the amount of water need^{ed} for irrigation purposes as well as to allow for controlling the irrigation system from a remote location.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evelyn-Veere (US Patent 5,023,787) in view of Thompson, et al. (US Patent 5,717,589).

The patented invention of Evelyn-Veere teaches a method and apparatus for controlling an irrigation system within a large area. In doing so, the reference of prior art discloses the use of a computer system for controlling a plurality of irrigation systems to define watering times, processing the flow rates, and updating the system based on time and conditions. See Figure 4. Evelyn-Veere fails to teach the use of a radar scanning device to examine the amount of rainfall as a means of metering or measuring the weather conditions. To this effect, Thompson, et al. teaches the use of a weather tracking system that is able to track and predict weather conditions with the use of a radar system in a geographic location. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the radar system of Thompson with the irrigation control system of ^{Evelyn-Veere} ~~Townsend~~ so as to be able to more accurately gauge the amount of water need^{ed} for irrigation purposes as well as to allow for controlling the irrigation system from a remote location.

The patented invention of Evelyn-Veere continues to teach the limitations of the claimed invention. Wherein, the regulation of irrigation ~~of~~ is carried out by initiating/granting or preventing/denying as per instant claims 2, 7-9, 13, 15, and 17 is disclosed in column 2: lines 43-53 and column 4: line 5, et seq. . A computer system with a monitor, as per claims 3 and 5, is used to control the irrigation system; see figures 1 and 3. The irrigation system takes into account the variations in the weather conditions and the radar of the Thompson, et al. reference provides additional weather data, as per claims 4 and 16.

For the reasons stated above, the limitations of the claimed invention is taught by the prior arts of record; thereby, rendering the instant claims unpatentable.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheela Rao whose telephone number is (703) 305-9766. The examiner can normally be reached Tuesday - Thursday from 9:00 am to 3:00 pm.

433-9180
grr

Art Unit: 2125

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard, can be reached on (703) 308-0538.

Any response to this action should be mailed to:

**Commissioner of Patents and Trademarks
Washington, D.C. 20231**

or faxed to:

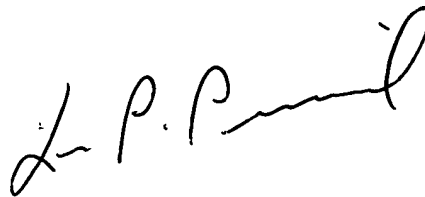
(703) 746-7238	for After-Final Communications
(703) 746-7239	for Official Communications
(703) 746-7240	for Status Inquiries of Draft Communications

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.



Sheela S. Rao
September 24, 2003



**LEO PICARD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100**